

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MICHAEL HEFFERNAN,)	CASE NO.
)	
Plaintiff,)	
)	
Vs.)	
)	
CHANDER BHAG, and US SHIPPING)	COMPLAINT AND JURY DEMAND
TRANS, INC., a foreign)	
corporation,)	
)	
Defendants.)	

COMES NOW the Plaintiff, Michael Heffernan, and for his cause of action, states:

1. Plaintiff is over the age of majority, a resident of the State of Iowa who was traveling through New Mexico at all times material hereto, but in particular on August 9, 2013, and is otherwise competent to bring this lawsuit.

2. The pedestrian/trucking accident that is the subject of this lawsuit occurred on August 9, 2013 at mile marker 140 at the onramp to I-40 westbound in Bernalillo County, New Mexico.

3. Upon information and belief, Defendant US Shipping Trans, Inc. is a foreign corporation or company transporting goods through Bernalillo County, New Mexico, and is the owner

and operator of commercial vehicles for interstate use.

4. Upon information and belief, Defendant Chander Bhag is over the age of 18 and is not on active duty in any branch of the United States Military.

5. Defendant US Shipping Trans, Inc. was the owner of a certain subject 2007 Freightliner semi tractor trailer, California license plate #WP03728, vin #1FUJBBAV57PW76622, DOT#1435973 involved in the subject motor vehicle accident.

6. On August 9, 2013, Defendant Chander Bhag, an employee of Defendant US Shipping Trans, Inc., while acting within the course and scope of his employment with Defendant US Shipping Trans, Inc., was driving the 2007 Freightliner semi tractor trailer.

7. On August 9, 2013 Defendants US Shipping Trans, Inc. and Chander Bhag were transacting business within New Mexico by using the subject 2007 Freightliner semi tractor trailer for hire for commercial transportation in and across New Mexico, subjecting both Defendants to the laws of New Mexico, including the New Mexico Department of Transportation Rules and Regulations, New Mexico traffic laws, New Mexico insurance requirements, and federal insurance laws, i.e. the Federal Motor Carriers Act.

8. August 9, 2013 Chander Bhag was operating the 2007 Freightliner in the course and scope of his employment when he drove the Freightliner on to the westbound onramp to I-40 at mile marker 140 and slammed into the guardrail that Michael Heffernan was sitting on. After striking the guardrail the Freightliner went over the top of the Plaintiff, pinning him underneath the Freightliner when it came to rest.

9. This court has jurisdiction in the constituent action based upon 28 U.S.C. § 1332(a), as there is complete diversity among Plaintiff and Defendants and the amount in controversy exceeds \$75,000.00. Further, this court has subject matter jurisdiction over this accident and controversy and personal jurisdiction over the Defendants pursuant to the New Mexico Long Arm Statute NMSA §38-1-16(1971).

CAUSES OF ACTION

Count 1

10. Defendant Chander Bhag owed a duty to exercise ordinary care at all times to prevent an accident and breached that duty.

11. Defendant Chander Bhag owed a duty to keep a proper lookout and to maintain proper control of his vehicle so as to avoid placing others in danger and to prevent an accident,

and he breached that duty.

12. The subject accident was the result of Defendant Bhag's:

- a. failure to use ordinary care in the operation of his semi tractor trailer;
- b. failure to give his full time and attention to the operation of his vehicle;
- c. failure to follow State of New Mexico Department of Transportation Rules and Regulations in the operation of his vehicle;
- d. failure to follow other New Mexico traffic laws; and/or
- e. failure to otherwise operate his vehicle in a reasonable and safe fashion.

12. Defendant Bhag's negligence was the cause of the subject accident and Plaintiff Michael Heffernan's personal injuries, damage and loss, including but not limited to: possible brain injury, severe burns, cervical spine injuries, injuries to his hip, injuries to his jaw, sprains and strains to his body, medical expenses, loss of his ability to enjoy life and participate in hobbies and recreational activities, pain and suffering, discomfort and inconvenience and other damages.

13. The subject 2007 Freightliner semi tractor trailer, California license plate #WP03728, VIN #1FUJBBAV57PW76622, DOT#1435973, involved in the accident which is the subject of this lawsuit was at all times material hereto was owned and operated by Defendant US Shipping Trans, Inc.

14. Defendant Chander Bhag was an employee of the Defendant US Shipping Trans, Inc., and was acting in the course and scope of his employment at all times material to this complaint.

15. Under New Mexico law and the circumstances of this case, Defendant US Shipping Trans, Inc., as the owner of the semi tractor trailer involved in the subject accident and as the employer of Defendant Chander Bhag, is vicariously liable for any wrongful act, conduct, action, inaction or admission of their employee.

Count 2

16. Paragraphs 1-15 of this Complaint are hereby incorporated by reference as if fully set forth herein.

17. Defendant US Shipping Trans, Inc. owed Plaintiff a duty of care that included the duty to make reasonable hiring and retention decisions.

18. In light of Defendant Chander Bhag's lack of

understanding or lack of ability to fully comprehend the laws of the road in the State of New Mexico, the decision by the Defendant US Shipping Trans, Inc. to hire Defendant Chander Bhag as a over-the-road truck driver was not reasonable and constituted a breach of its duty of care. Alternatively, if Defendant US Shipping Trans, Inc. was unaware of Chander Bhag's lack of understanding or lack of ability, this ignorance was itself unreasonable and negligent and constituted a breach of its duty of care.

19. The unreasonable and negligent hiring and retention of Defendant Chander Bhag by Defendant US Shipping Trans, Inc. proximately caused Plaintiff Michael Heffernan damages and injuries, as described above.

Count 3

20. Paragraphs 1-19 of this Complaint are hereby incorporated by reference as if fully set forth herein.

21. Defendant US Shipping Trans, Inc. owed Plaintiff a duty of care that included the duty to reasonably supervise Defendant Chander Bhag.

22. In light of Defendant Chander Bhag's lack of understanding or lack of ability to fully comprehend the laws of the road in the State of New Mexico the decision by the

Defendant US Shipping Trans, Inc. to properly supervise Defendant Chander Bhag as an over-the-road truck driver was not reasonable and constituted a breach of Defendant US Shipping Trans, Inc.'s duty of care. Alternatively, if Defendant US Shipping Trans, Inc. was unaware of Chander Bhag's lack of understanding or lack of ability, this ignorance was itself unreasonable and negligent and constituted a breach of its duty of care.

23. The unreasonable and negligent supervision of Defendant Chander Bhag by Defendant US Shipping Trans, Inc. proximately caused Plaintiff Michael Heffernan damages and injuries, as described above.

JURY DEMAND

Plaintiff requests a trial by jury of all claims so triable.

WHEREFORE Plaintiff prays for an order of the Court giving Judgment against defendants jointly and severally in an amount reasonable to compensate Plaintiff for his injuries, damages and losses; for general and special damages found to be owing by the Court; for the costs of the litigation; for pre- and post-judgment interest; and for such other and further relief that the Court deems just.

Respectfully submitted,

FINE LAW FIRM

/s/ David M. Fine

David M. Fine

Charlotte L. Itoh

220 Ninth Street NW

Albuquerque, NM 87102

Tel: 505-243-4541

Fax: 505-242-2716